

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3159 of 1996

to

FIRST APPEAL No 3196 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5: No

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SPL.LAQ OFFICER

Versus

ARVINDBHAI M PATEL

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Appearance:

Mr.M.R. Raval, AGP, for the State, in F.A. Nos. 3159 of 1996 to 3177 of 1996

Mr.H.L. Jani, AGP, for the State, in F.A. Nos.3179 of 1996 to 3196 of 1996

Mr.G.H. Amin for the Acquiring Body-appellant No.3

MR AJ PATEL for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

Date of decision: 11/02/99

COMMON JUDGMENT : (Per: Panchal. J.)

1. Admitted. Mr. A.J. Patel, learned Senior

Advocate, waives service of notice on behalf of the respondents in each appeal. At the joint request of the learned counsel appearing for the parties, all these appeals are taken up for final hearing today.

2. By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of the common judgment and award dated February 1, 1996, rendered by the learned Extra Assistant Judge, Bharuch, in Land Acquisition Reference No. 48/90 to 65/90 and 560/90 to 579/90. It may be stated that the lands, which are subject matter of these appeals, were placed under acquisition pursuant to notification dated January 27, 1988 under Section 4 of the Land Acquisition Act, 1894. All the abovereferred to reference applications were consolidated with Land Acquisition Reference No.59/90, and the parties have led common evidence. As common questions of facts and law are involved in these appeal, we propose to dispose of these appeals by this common judgment.

3. A proposal to acquire agricultural lands of village Kisnad, Taluka and District: Bharuch, for construction of Luwara Branch Canal, was received by the State government. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Kisnad were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on January 27, 1988. The Special Land Acquisition Officer had considered objections raised by the lands owners which were submitted pursuant to notice under Section 4 of the Act. After considering objections, report as contemplated by Section 5A(2) of the Act was forwarded to the State Government. On consideration of the said report, the State Government was satisfied that the lands of village Kisnad which were specified in notification issued under Section 4(1) of the Act, were needed for public purpose of construction of Luwara Branch Canal. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on March 8, 1988. Interested persons were, thereafter, served with notices under Section 9 of the Act for determination of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.2000/- per Are. The Special Land Acquisition Officer after considering the materials placed before him offered compensation to the claimants at the rate of Rs.170 per Are by his common

award dated February 29, 1899. According to the claimants, the offer of compensation was inadequate. Therefore, the claimants submitted applications in writing requiring the Special Land Acquisition Officer, to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Bharuch, which were numbered as Land Acquisition Reference No. 48/90 to 65/90 and 560/90 to 579/90. In the reference applications, it was pleaded by the claimants that having regard to the market value of the lands situated near the acquired lands, and potentiality of the acquired lands, they should be paid compensation at the rate of Rs.2000/per Are. The reference applications were contested by the present appellants vide written statement Exh.3. Therein, it was averred that, after receipt of notice under Section 9 of the Act, the claimants had not produced sale instance to enable the Special Land Acquisition Officer to determine compensation and had also accepted compensation unconditionally and, therefore, the applications were not maintainable in view of the provisions of Section 25 of the Act. It was claimed in the reply that the compensation awarded by the Special Land Acquisition Officer was adequate in view of the evidence produced before him and, therefore, the reference applications should be dismissed. In order to substantiate the claim advanced in the reference applications, the claimants examined witness Arvindbhai Motibhai Patel at Exh.9. The witness deposed before the court that village Palej was situated at a distance of 3 k.ms. from the acquired lands and the Special Land Acquisition Officer himself had determined market value of the lands of village Palej at the rate of Rs.25/- per sq.mtr as on October 3, 1986, which was the date of publication of the notification under Section 4(1) of the Act. The witness further produced index of sale relating to Block No.394 of village Kisnad which indicated that plot admeasuring 0 Hectare 12 Are 14 Sq.mtrs was sold for an amount of Rs.10,000/- in March 1987. The witness admitted in his cross examination that sale of block No.394 was pertaining to a small plot in comparison to the acquired lands and was situated near village Sasroth which was fully developed. The witness denied the suggestion made on behalf of the appellants that block No.394 which was subject matter of sale deed dated March 10, 1987, was situated at a distance from the acquired lands. On behalf of the appellants, neither oral nor documentary evidence was adduced. The Reference Court, on appreciation of evidence, found that the previous award of the Special Land Acquisition Officer relating to the

lands of village Palej was neither comparable nor relevant for the purpose of determining market value of the acquired lands. The Reference Court deduced that sale of block No.394 on March 30, 1987 was relevant for the purpose of ascertaining the market value of the acquired lands. Therein, the price indicated was Rs.825 per Are. There was time lag between execution of sale deed and publication of notification under Section 4(1) of the Act. The Reference Court was, therefore, of the opinion that reasonable rise in price should be considered in favour of the claimants while determining the market value of the acquired lands. In ultimate analysis, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.850/- per Are by the impugned common award, which has given rise to the present appeals.

4. The learned counsel for the appellants submitted that relying upon the index of sale, market value of the acquired lands should not have been determined and, therefore, the appeals should be allowed. It was claimed that sale instance relied upon by the Reference Court related to a small piece of land and, therefore, while determining market value of large tract of land under acquisition, the same should not have been considered at all. What was stressed was that no cogent and convincing evidence was adduced by the claimants to justify the award of compensation at the rate of Rs.850/- per Are and, therefore, the impugned award should be set aside.

5. Mr. A.J. Patel, learned Senior Advocate, appearing for the claimants, contended that the sale index was produced on the record of the case with consent of the appellants and the appellants having persuaded the Court to determine market value of the acquired lands on the basis of sale indicated therein, the appeals should be dismissed. The learned counsel for the claimants emphasized that the acquired lands were highly fertile and having regard to potentiality of the acquired lands for commercial and residential purpose, determination of compensation by the Reference Court cannot be said to be on higher side so as to warrant interference of the Court in the present appeals. The learned counsel for the claimants submitted that a just and reasonable award has been passed by the Reference Court determining compensation of the acquired lands and, therefore, the appeals should be dismissed.

6. We may state that by order dated February 10, 1999, we had directed the office to call for R & P of the case and pursuant to the said order R & P is received by

this Court. We have gone through the record of the case. It is relevant to note that, though the witness examined on behalf of the claimants had produced previous award of the Special Land Acquisition Officer in respect of the lands of village Palej for determination of compensation of the acquired lands, the Reference Court was justified in not placing reliance on the said award, as it was not proved by the claimants that the said award was either comparable or relevant or that it had become final between the parties. In view of paucity of evidence, it cannot be said that any error is committed by the Reference Court in not placing reliance on the previous award of the Special Land Acquisition Officer while determining market value of the acquired lands. As far as the sale index relating to block No.394 of village Kisnad is concerned, the Reference Court in the impugned award has stated that measurement of the said plot was 1214 sq.ft, but it is a mistake, and block No.394 admeasured 0 Hectare 12 Are and 14 Sq.mtrs at the time when it was sold on March 10, 1987. In the present case, the lands placed under acquisition pursuant to notification dated January 27, 1988 admeasured 5 Hectares. Though the witness examined on behalf of the claimants stated before the Court that the acquired lands were similar to block No.394, the Reference Court, before placing reliance on the said sale instance, ought to have made appropriate deduction from the price indicated by sale transaction dated March 10, 1987. It is well settled that when large tracts are acquired, transactions in respect of small properties do not offer appropriate guidelines and, when the transaction in respect of small land is found to be similar and relevant for the purpose of determining the market value, appropriate deduction from the price indicated by the small transaction should be made to ascertain the market value of the large tracts. Moreover, the witness examined on behalf of the claimants had also admitted that Block No.394 was situated in a better locality of the town and was just adjoining village Sasrodh which was fully developed. Under the circumstances, we are of the opinion that the Reference Court committed error in determining market value of the acquired lands on the basis of sale transaction without making appropriate deduction from the sale price as indicated in Exh.8. Having regard to the facts of the case, we are of the opinion that 20% deduction ought to have been made by the Reference Court from the price of sale relating to block No.394 before determining market value of the acquired lands. If deduction of 20% is made, then market value of the acquired lands would be Rs.660/- (Rs.825 minus Rs.165) per Are as on the date of notification issued under

Section 4(1) of the Act. Moreover, there was gap of time between sale deed and publication of notification under Section 4(1) of the Act. Therefore, the Reference Court was justified in considering rise in price of lands in favour of the claimants more particularly it is reasonable to presume that there is always rise in price of lands with passage of time. In our view, the claimants would be entitled to rise in price of lands at the rate of Rs.40/- per Are. On over all view of the matter, we are of the opinion that the claimants are entitled to compensation at the rate of Rs.700/- per Are, and, therefore, the common impugned award will have to be modified accordingly.

7. For the foregoing reasons, all the appeals filed by the appellants partly succeed. It is held that each claimant is entitled to compensation at the rate of Rs.700/- per Are. Other directions regarding payment of compensation given in the impugned award are not interfered with in these appeals and they are hereby confirmed. There shall be no order as to costs. The office is directed to draw decree in terms of this judgment. Learned counsel, Mr. G.H. Amin, appearing for appellant No.3, on instruction, states that 60% of the compensation awarded by the Reference Court is already deposited before the Reference Court and the remaining amount which may be found payable pursuant to the judgment of this Court shall be deposited preferably within four months from today.

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